IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2151 OF 2005

Mr. R.K. Agrahari ...Applicant.

V/s

M/s. Induslnd Enterprises
and Finance Ltd & Ors. ...Respondents.

Mr. P.C. Kansara i/b Kansara & Thanekar for the applicant.

Mr. D.P. Adsule, APP for the State.

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CORAM: V.M.KANADE,J.

DATE: 21st April 2005

P.C.:

1. Heard the learned counsel for the applicant.

2. Applicant is challenging the issuance of the process by the Metropolitan Magistrate, 14th Court, Girgaum, Mumbai on the complaint filed by respondent No.1 under section 138 of the Negotiable Instruments Act.

3. It is submitted by the learned counsel appearing on behalf of the applicant that the applicant was a salaried employee working in the Company and the Resolution was passed by the Company appointing him as an authorized signatory to sign and operate the Bank

Account for the convenience and smooth working of the Company. It is submitted that 3 to 4 authorized signatories were appointed in each and every Division of the Company. It is submitted that, therefore, the applicant was not concerned with the day-to-day functioning of the Company as he was not in charge of the affairs of the Company. It is submitted that the applicant used to sign cheques as per the instructions which were given by the Board of Directors. It is further submitted that the Official Liquidator was appointed pursuant to the orders passed by this Court and the said Liquidator was controlling the affairs of the Company and had taken charge of the assets of the said Company. He further submitted that there were no averments in the complaint making the applicant liable and, therefore, the process which was issued against him was liable to be quashed. In support of the said submissions, the learned Counsel relied upon the judgment of the Supreme Court in the case of Katta Sujatha (Smt) Vs. Fertilizers & Chemicals Travancore Ltd and anr., reported in ILR 2003 KAR 4856. The learned Counsel appearing on behalf of the applicant invited my attention to the annual report of the Company to demonstrate that the applicant was neither a director of the said Company nor was he in charge of the affairs of the said Company.

4. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the applicant. In the complaint which is annexed to the application, there are specific averments made against the present applicant. In para 3 of the complaint, it is stated that the accused Nos. 2 and 3 are the authorized signatories of accused No. 1 - Company. In para 5, it is stated that accused Nos. 2 and 3 had issued cheque dated 18/4/1996 in favour of the complainant - Company. In para 10 of the complaint it is stated that the accused Nos. 2 and 3 are the authorized signatories of the cheque of accused No.1 - Company and accused No. 4 is the Chairman of accused No.1 - Company and accused Nos. 5 to 10 are directors of accused No.1 - Company and as such all the accused are responsible for the conduct of the business of accused No.1 - Company and shall be deemed to have committed an offence under section 138 read with section 141 of the Negotiable Instruments Act. Thus the contention of the applicant that he is merely an authorized signatory and that he had acted on the instructions of the Board of Directors and that he had no knowledge that the cheque would be dishonoured can only be proved in the trial court after the evidence is adduced by the complainant and the presumption

raised under the Act is rebutted by the applicant. At this stage, therefore, it will not be possible to decide this issue which is a question of fact while exercising inherent powers of this Court under section 482 of the Criminal Procedure Code. The ratio laid down in the case of Katta Sujatha (supra) will not be applicable to the facts of the present case. In the said case the Supreme Court on the facts of the said case in para 3 of its judgement observed as under:-

> "3. The complaint set out that a cheque had been issued on behalf of the firm, 1st accused by T. Satyanarayana, 3rd accused but did not specifically attribute any particular act done by the 4th accused, who is the appellant before us."

Thus, in view of the facts of the said case, the Apex Court made the observations in para 4 of the said judgment. Since, in the present case, there are specific averments as stated hereinabove, the ratio of the said judgment will not be applicable to the facts of the present case.

5. Thus, the Criminal Application is dismissed. All questions raised in this application are kept open and

the trial court shall decide the same on merits and in accordance with law after the evidence is adduced by both parties.

V.M. KANADE, J.